



5th October 2010

Comments of **MARQUES Amicus Curiae Committee made to interested parties**

*In the matter of Application No. 2528977 for the mark "IP TRANSLATOR"
in the name of The Chartered Institute of Patent Attorneys ("CIPA")*

**On referral to the Court of Justice of the European Union ("CJEU")
from the UK Appointed Person by Order made on 27 May 2010 ("the AP's Order")**

1. Status of these comments

- 1.1 **MARQUES**, the European Association of Trade Mark Owners ("**MARQUES**"), through its *Amicus Curiae* team, respectfully submits these comments to Interested Parties ultimately for the consideration of the CJEU to assist it in answering the questions contained in the AP's Order. We invite you, as an Interested Party, either to annex these comments to such observations as you plan to make in this matter or, otherwise, to incorporate within your own observations and, as you consider appropriate, expand on any of points we make here. Our wish is to have the views of **MARQUES** ' members brought to the attention of the CJEU, as well as those in a position to effect any desirable legislative amendments.
- 1.2 **MARQUES** does not seek to make a formal intervention in the matter, but would be prepared to attend by Counsel at the hearing to answer any questions which the CJEU may wish to ask in relation to any of the points made here.
- 1.3 **MARQUES** does not seek any contribution to its costs in relation to these comments and assumes that the provision of these comments will not involve any of the parties in additional costs. **MARQUES** believes it is in the public interest for third parties interested in a matter which has an impact beyond the dispute between the parties to be able to contribute to the debate. **MARQUES** hopes that these comments will be seen in that light and will be of assistance to the CJEU in coming to its decision.

2. **MARQUES**

- 2.1 **MARQUES**, the European Association of Trade Mark Owners, is an Association created to educate and promote the professional development of brand owners in the selection, management, protection and exploitation of their trademarks within a global economy. **MARQUES** offers a forum for the free exchange of such ideas and information and to provide an effective platform for the representation of its members' interests.
- 2.2 **MARQUES** was founded in 1987 and is incorporated in the United Kingdom as a not for profit company limited by guarantee. It has no shareholders, issues no dividends and its directors are

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expressly prohibited from being paid for their services. **MARQUES** represents the interests of European trade mark owners in the protection and utilization of trademarks as essential elements of commerce. Its current membership of trade mark owners and legal practitioners representing trade mark owners is in excess of 600 members in 84 countries. Membership crosses all industry lines.

- 2.3 An important objective of **MARQUES** is to safeguard the interests of the public by ensuring the proper protection of trademarks and to safeguard the interests of trade mark proprietors with regard to the regime of trade mark protection. **MARQUES** attempts to achieve this objective by advancing the cause of trade mark laws which protect the public from deception and confusion.
- 2.4 **MARQUES** is an accredited association before the Office for Harmonisation of the Internal Market ("OHIM") and an official non-governmental observer to the World Intellectual Property Organization ("WIPO"). **MARQUES** is managed by an elected Council and external relations teams are appointed to monitor trade mark issues affecting European brand owners, identifying issues and problems and proposing responsive action.
- 2.5 These teams include an *Amicus Curiae* team. It has a brief to intervene in or comment upon legal proceedings where deemed appropriate and where permissible on behalf of the organization in cases considered to involve important trade mark issues likely to have a significant impact on trade mark owners and the public. In doing so, **MARQUES** adopts a position of neutrality with respect to the case and the parties. It wishes to address general principles and certain specific points of law and does so on behalf of the constituency of trade mark owners it represents. The *Amicus Curiae* team has prepared these comments which have been approved by the Chairman of the **MARQUES** Council.
- 2.6 With these objectives in mind, and in the context of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2009 to approximate the laws of the Member States relating to trade marks ("the TMD"), **MARQUES** is keen to see greater certainty, clarity and consistency of approach brought to bear in how trade mark registries ("IPOs") throughout the European Community ("EC") interpret the use of WIPO Nice International Classification class headings to specify the goods or services to be protected by a trade mark registration. The use of the entire class heading is referred to below as a "class heading specification".

3. The questions and **MARQUES** ' invited answers

- 3.1 The Schedule to the AP's Order includes questions posed to the CJEU as follows:

"In the context of the TMD, is it:

- (a) *necessary for the various goods or services covered by a trade mark application to be identified with any and if so what particular degree of clarity and precision;*
- (b) *permissible to use the general words of the Class Headings of the International Classification of Goods and Services established under the Nice Agreement of June 15, 1957*

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(as revised and amended from time to time) for the purpose of identifying the various goods or services covered by a trade mark application;

- (c) *necessary or permissible for such use of the general words of the Class Headings of the said International Classification of Goods and Services to be interpreted in accordance with Communication No. 4/03 of the President of the Office for Harmonisation of the Internal Market of 16 June 2003 (OJ OHIM 2003 p. 1647)" (this is referred to below as "Presidential Communication No. 4/03")?*

3.2 **MARQUES** considers that the answers to the three questions should be, respectively,

- (a) Yes, with a similar degree of clarity and precision as applies under the *Sieckmann* criteria (Case 273/00) for the representation of marks,
- (b) Yes, with the proviso that such words should then be interpreted as meaning what they say and not as referring to extra, non-specified items by implication; and
- (c) No, it should be neither necessary nor permissible.

4. Summary of the issues and principal reasons for **MARQUES'** invited answers

4.1 **MARQUES** is aware, and its members fully supportive, of:

- (a) the TMD's requirements that registered trademarks enjoy the same protection under the legal systems of all EC Member States; and
- (b) intentions by OHIM and the IPOs in various Member States to find a compromise between a trade mark owner's interest to not be forced to describe each and every good and service in minute detail where a collective term may suffice and the public's interest to be clearly informed as to the scope of protection conferred by a trade mark registration.

4.2 The choice of words for the class headings has developed through practice over many years. This has led to the adoption of words that are generally recognised and standard descriptors, whose literal meaning is commonly understood. In particular, because of this, they are regularly used and they fall within standard translation databases. The latter point is especially significant when it comes to Community Trade Marks ("CTMs") or other cross-border issues. **MARQUES** considers there is no basis for prohibiting the use of the very words that may most accurately and concisely describe what is to be covered and which can be readily translated to facilitate cross-border trade mark matters. Accordingly, a positive answer should be given to the second question.

4.3 However, **MARQUES** is concerned that a positive answer to the third question, in particular, would, on balance, prejudice brand owners and the business community at large. This is for the reasons outlined below and expanded upon in section 7:

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- (a) It effectively allows applicants to circumvent the requirements of the Trademark Law Treaty ("TLT") which all EC IPOs now consider preclude specifications of the type "*All [goods/services] in class XX*".
- (b) The CTM and national EC registers would become misleading 'traps' for those ordinary users that may consult them as part of good business practice (as is often invited or encouraged by IPO websites and policy statements and obligatory in some countries, e.g. Germany). This is because the specifications would not mean what they say and instead cover 'hidden' goods.
- (c) It undermines the unitary character of a CTM and means an owner of national and CTM registrations with class heading specifications will benefit from materially different levels of protection in opposition, revocation and/or infringement proceedings for these rights which, on their face, should be of identical scope.
- (d) Clearing new pan-EU brands would be made additionally difficult and costly, raising barriers to entry for new product development and improved consumer choice.
- (e) Obtaining registered protection for new brands would be more difficult, with a greater likelihood of IPO objections and/or oppositions being encountered.
- (f) It interferes with the smooth and clear operation of the systems relating to:
 - (i) Priority;
 - (ii) Seniority;
 - (iii) Conversion; and
 - (iv) Resolving potential conflicts between simultaneous or successive trade mark actions.

5. The background

- 5.1 Towards the end of 2007, **MARQUES** conducted a survey among practitioners in the EC member states (plus Iceland, Norway and Switzerland) as to how class heading specifications and the general indications within each class heading are being interpreted in their jurisdiction. The general indications are essentially the groups of words within a class heading separated by a semi-colon, e.g. "Household or kitchen utensils and containers" in class 12. There are exceptions, e.g. "*computers*" seems to be treated by OHIM as a general indication even though that part of the class 9 heading in full is "*cash registers, calculating machines, data processing equipment and computers*". The results also took into account many official replies obtained from the respective intellectual property offices ("IPOs").

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- 5.2 The results were published at the beginning of 2008 and are annexed at Schedule 1. <http://www.marques.org/Teams/TeamPage.asp?PageID=95&TeamCode=TradTeam> is a link to the results as made available on the **MARQUES** website.
- 5.3 The survey results (taken together with subsequent updates that have not been published by **MARQUES**) show that:
- (a) More than half of the national IPOs interpret class heading specifications to "mean what they say", i.e. covering goods or services as exactly described by the words or which fall within that general description. This applies the rules applicable to any other choice of wording. The IPOs concerned include Austria (see below), Benelux, Czech Republic, Denmark, France, Germany, Ireland, Latvia, Poland, Spain, Sweden and, until this *CIPA v UKIPO* case, the UK.
 - (b) A minority of the national IPOs interpret class heading specifications consistently with OHIM Presidential Communication 4/03, i.e. as if the specification reads "*All goods in class XX*" (even though such words themselves would not be permitted). The IPOs concerned include Bulgaria, Estonia, Finland, Hungary, Italy, Lithuania and Romania – with Austria having originally been in this list.
- 5.4 OHIM's approach under the Presidential Communication 4/03 is as follows:
- (a) The use of all general indications within the class heading (i.e. the whole class heading) constitutes a claim to all the goods or services falling within that particular class.
 - (b) Where only one or some of the general indications are used, they are deemed to cover all the goods/services within the class save those clearly falling within the meaning of any omitted general indication(s). So, for those goods/services not thereby omitted, they are considered to be included within whichever of the cited general indications is closest to those goods/services. That applies even if it is not readily apparent from the wording of the general indication(s) used which general indication is the closest.
- 5.5 This can lead to an unexpected consequence when it comes to amending specifications. OHIM considers it a proper restriction (and not an inadmissible extension) to amend a list of goods/services by deleting a particular general indication and replacing it with a list of goods/services even though they may not obviously fall within the meaning of that general indication. This is provided that the general indication being deleted is considered to be the one that was closest to the goods/services now being listed. This rule is applied in examination, opposition and cancellation proceedings and, furthermore, to the assessment of genuine use of a trade mark.
- 5.6 From the experience of **MARQUES** members and based on discussions **MARQUES** has had with representatives of OHIM on this topic over the years, it is clear that OHIM:
- (a) treats a specification of "*All goods/services in class XX*" as insufficiently specific; but

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(b) considers it too complicated to list each and every good instead.

5.7 **MARQUES**'s understanding is that the approach set out in Presidential Communication 4/03 was adopted by OHIM from its very inception. It was in response to the large number of CTM applications that were filed with "*All goods..*" specifications on the day that the CTM system started (1 April 1996). OHIM decided to translate such specifications into class heading specifications, with the intention and understanding that they had the same effect. Whilst this approach thereby enabled those applicants to be given filing dates of 1 April 1996, **MARQUES** questions whether this is a sound basis for maintaining the approach, particularly in conflict to the approach taken by more than half of the national IPOs within the EU.

6. The authorities

6.1 The Schedule to the AP's Order includes a helpful review of the relevant legal authorities, to the extent relevant. There is little that needs to be added to this.

6.2 There can be no question that the advice given in the Presidential Communication 4/03 is merely an opinion and not legally binding. It is issued 'to ensure the efficient functioning of the Office'. As mentioned above, it was first introduced to solve a problem in April 1996. Whether it can continue to be justified on the basis stated in Presidential Communication 4/03 is open to question.

6.3 The only directly relevant authority from the CJEU is the DIESEL/DIESELIT case¹, a decision of the Court of First Instance. The CFI ruled that the class heading specification of both the prior CTMs and the prior Italian national right meant those rights covered all the goods in the class. However, the CFI seemingly did not give detailed consideration to the matter and was apparently not referred to the Presidential Communication 4/03, even though it had been issued by the time of the case (it is not mentioned in the decision). As a result, this is a matter that CJEU will be considering in detail for the first time.

6.4 **MARQUES** considers that the CJEU's judgment itself in *Sieckmann*² should have a bearing on this issue. That judgment explained how the precise identification of the mark (in that case a smell) must support the sound operation of the trade mark registration system, in particular by enabling the users of the system to find out about the rights of third parties through registration. The Court therefore established that the representation of the mark must meet seven criteria, namely be '*clear, precise, self-contained, easily accessible, intelligible, durable and objective*'.

6.5 **MARQUES** considers that these criteria, or something close to them, should equally apply to the specification of the goods and services. If the CJEU (as it was) considers such certainty, as regards the representation of the mark, to be legally critical to ensuring appropriate user understanding, then the same should be true of the only other parameter that defines the scope of protection, namely the specification.

¹ Case T-186/02 *BMI Bertollo Srl v OHIM*

² Case C-273/00 *Ralf Sieckmann v Deutsches Patent- und Markenamt*

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7. The implications

7.1 If the answer to the third question were to start "Yes", this would introduce severe uncertainties to both brand owners and the general public. The implications would be wide sweeping, including the following:

- (a) The practice would be no clearer for the ordinary user of the trade mark system and is no more compliant with the TLT than the use of the specifications of "*All [goods/services] in class XX*". (The latter words are now accepted by IPOs in the EU not to comply with the formalities requirements of Article 5(1)(a)(v) of the TLT, namely for a list of goods/services to be provided in order to be giving a filing date.) This is because:
 - (i) An ordinary user cannot conclude from the registration details the full scope of protection without extensive additional knowledge. Firstly they would need to be aware of Presidential Communication 4/03. Secondly, they would need sufficient knowledge about the NICE classification system to recognize whether the general indications of a particular class heading are listed completely (so that all goods/services are covered) and what other goods/services not falling within the literal meaning of the general indications about the goods/services belong in the respective class. Such knowledge must not be expected from an ordinary user.
 - (ii) The class headings do not, and were not intended to, literally encompass all goods/services falling within a specific class. The latter can number many thousands (see paragraph 19 of the Schedule to the AP's Order which cites OHIM's list of 3,000 or more services that could fall within class 41). The class headings are no more than guides to facilitate proper classification in a unitary system;
 - (iii) It is just one shorthand substituted for another, but with the same impermissible meaning. In some cases the shorthand is even briefer and less meaningful than the "*All [goods/services] ...*" wording. In the current Ninth Edition of the Nice International Classification, the class heading is just one word for class 38 ("*telecommunications*"), two words for class 15 ("*musical instruments*"), three words for class 25 ("*clothing, footwear and headgear*") and four words for classes 33 and 34 (respectively "*alcoholic beverage (except beers)*" and "*tobacco, smokers' articles, matches*").
 - (iv) The "*All [goods/services]...*" wording is, at least, clear to an ordinary user that there is more to be investigated or understood. They could then make the necessary enquiries. In contrast, a class heading specification discloses no such 'hidden extras' on the face of it. This is particularly true of class 35 whose heading ("*advertising; business management; business administration; office functions*") does not reveal to an ordinary user that it covers all manner of retail services or all manner of goods. Instead, it misleads the ordinary user to believe that the terms specified might limit the scope of protection to what is actually specified.

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- (v) The Nice International Classification is subject to change. For instance, class 42 was split into classes 42 to 45 recently. Since trademarks can potentially benefit from indefinite protection, it could be necessary to interpret the scope of protection by reference to a class heading regime that applied many decades previously. This situation arose in an English High Court case, *Daimler v Sany*³, in which some of the trade marks dated back to 1933. It is particularly the case that this cannot be expected from an ordinary user.
 - (vi) The above concerns not only relate to the situation in which the full class headings is used. They also arise if only one or some of the general indications are used. Pursuant to Presidential Communication 4/03, this gives protection also to those goods/services “coming closest” to that general indication. In these circumstances, an ordinary user would have to recognize that the listed goods/services in fact correspond to a general indication rather than to specific goods/ services. He would further have to know that a general indication can mean more than it says. Finally, he would have to know what other goods/services in the particular class come closest to that general indication. At least, the latter issue is an impossible undertaking even for an experienced practitioner.
 - (vii) The hidden goods/services of a class heading specification would benefit from the guaranteed protection of Articles 4(1)(a) and 5(1)(a) TMD (without the need to show confusion or reputation), even for goods or services potentially far removed from the limited goods/services that, on the face of the wording, ought to benefit from such protection. An ordinary user that had taken the trouble to consult the register could thereby become an unwilling and inadvertent infringer of a registration with a class heading specification. This exposes such a user not only to civil liability, but also potentially criminal liability.
- (b) It makes the clearance of new brands more difficult and, therefore, costly. The registers are already crowded by marks registered with class heading specifications. Applying the approach of Presidential Communication 4/03, such registrations are given broad protection even if they have no reputation and, indeed, may not even have been used. This artificially impedes the clearance of new brands and block market innovation. An unused prior right with a class heading specification may consequently be treated as high risk in a Member State or IPO that applies OHIM's approach and yet may be only medium or low risk in other Member States. This hampers the adoption of single brands for the whole EC market (as is particularly desirable, for example, in the pharmaceutical sector) and presents unnecessary additional barriers to competition.
- (c) It raises additional barriers and can complicate the process of securing protection for new marks. It may be that the class heading words are the words that are most appropriate for describing an applicant's desired area of protection. However, to have additional 'hidden' goods and services implied into the description, some with no apparent connection to the

³ *Daimler v Sany Group Co. Limited*, [2009] EWHC 2581 (Ch)

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words used, can mean the application faces absolute ground objections (pursuant to Article 3(1)(c) TMD) that would not apply if the specification meant what it said. This is the situation in the *CIPA v UKIPO* case. Another example might be the word TOUPÉ applied for in class 26 using a class heading specification. The applicant may only wish and intend protection for lace, embroidery, ribbons, braid, buttons, hooks, eyes, pins and needles (as will have been described) and specifically not wigs and hairpieces (as falls within the class). Such applicants may have to add an exclusion to their specification so as to confine the protection to the limited meaning that was otherwise apparent just from the initial words used. Potentially more than one exclusion, and even a very long list, could have to be added.

- (d) It increases the likelihood of disputes between parties that, commercially, have no need to be in conflict:
 - (i) An applicant applying to register a trade mark with a class heading specification could face potentially multiple oppositions pursuant to Article 4 TMD from holders of prior rights who would not have filed such oppositions if the applicant's class heading specification were not deemed to cover all the goods or services in that class. This can lead to unnecessary oppositions which are wasteful of legal costs and IPO resources and which needlessly delay the grant of protection to the applicant.
 - (ii) The holder of a trade mark registration with a class heading specification that is more than five years old could face potentially multiple applications to revoke its registration for non-use of the mark pursuant to Article 12 TMD but in relation to services that it never intended or considered its registration was to cover. Whilst the holder could partially surrender its registration and propose alternative wording for its specification, such applications again waste legal costs and IPO resources and cause disruption to business operations.
 - (iii) The holder of a trade mark registration with a class heading specification could also face potentially multiple applications to revoke its registration (or, in some jurisdictions such as the UK, oppositions to the initial application) on the grounds that it was obtained in bad faith contrary to Article 3(2)(d) TMD since the holder had no genuine intention to use the mark for the 'extra' goods or services deemed to be covered by the class heading specification. The holder may indeed have had no such intention because it did not wish the specification to cover such goods or services. Having to defend its registration (or application) in such circumstances is therefore needless, disruptive and wasteful.

7.2 The issues raised in paragraphs 7.1(b) and (c) should not be underestimated. In the experience of **MARQUES'** members, the costs and disruption caused by such issues in connection with brand process of clearance, reviewing watch notices and securing protection for trademarks is a material burden. **MARQUES** is aware that OHIM questions the significance of the issues in practice. This is on the basis that there are apparently few appeals to IPO rejections or opposition, revocation or cancellation actions that cite Presidential Communication 4/03 (and/or the approach it advocates) as



the cause of particular difficulty. However, this fails to take into consideration the many occasions that **MARQUES'** members experience of:

- (a) having to negotiate clearance for a new brand with the owner(s) of prior right(s) with class heading specifications in order to secure freedom to use and register the new brand;
- (b) choosing not to proceed with use of a potential new brand in the face of prior right(s) with class heading specifications; or
- (c) having to resolve a threatened infringement claim or opposition dispute through negotiation of a co-existence agreement with the owner(s) of prior right(s) with class heading specifications,

where, in each case, a strict means-what-it-says interpretation of the prior right specification would not have merited the considerable disruption and expense of having to take such action. Such issues cannot be revealed or measured with a analysis of the published decisions of OHIM, any IPOs or any courts. They, nevertheless, create a substantial, albeit hidden, cost to industry.

7.3 If the third answer were merely that the interpretation of Presidential Communication 4/03 was "permissible", even if not necessary, it would perpetuate the currently conflicting interpretations of the various IPOs within the EU. **MARQUES** is further concerned that this would:

- (a) Undermine the process by which users of the trade mark system can claim priority (under the Paris Convention) and seniority (pursuant to Articles 34 and 35 of Community Regulation no. 2007/2009 (the "CTMR")), both of which require identity of the goods and services as between the initial and the subsequent application/registration (or for the latter to be at least a subset of the former);
- (b) Result in a narrowing of the scope of protection for a mark in some countries where a CTM has been converted into one or more national applications (pursuant to Articles 112 to 114 of the CTMR), even though the same specification is used throughout; and
- (c) Lead to legal uncertainty in the event there are allegedly or potentially simultaneous or successive actions within the EU that may trigger the provisions of Article 105 CTMR. This is on the basis that it could be called into question whether the two causes of action are indeed identical. The difficulty arises where the interpretation of the same specification differs between two jurisdictions such that an Article 4(1)(a) or 5(1)(a) TMD identical goods/services claim may arise in one jurisdiction but not the other.

7.4 It cannot be appropriate to have such harmonising aspects of our system dependent on potentially conflicting interpretations of the meaning of class heading specifications. **MARQUES** considers that it is essential for such interpretations to be consistent throughout the EU.

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8. Weighing up the advantages of OHIM's approach

8.1 The main advantages **MARQUES** sees of the approach set out in Presidential Communication 4/03 are those of (a) shortening specifications generally and (b) facilitating translation into all the official languages, thereby saving costs.

8.2 Considering each in turn:

- (a) Clarity must not become the victim of brevity, especially for the ordinary user. Short specifications certainly have some attraction but only if they are also entirely clear in their meaning and scope. Very long lists of goods and services can be unhelpful and do not necessarily add clarity. In particular, they can make the process of clearing new brands or reviewing watch notices very time consuming, complex and costly.

Whilst not within the remit of the CJEU in rendering its decision in this case, **MARQUES** believes the issue of overly long specifications is something to be addressed separately within the EC Commission's pending review and potential amendments to the EU trade mark system.

Accordingly, **MARQUES** does not believe the CJEU should favour a broad interpretation of class heading specifications for reasons of encouraging brevity.

- (b) Various IPOs are now offering sophisticated online tools to assist with the drafting of specifications. Examples include OHIM with its EUROACE database and equivalents for the UKIPO and shortly also WIPO. The IPOs invite users to use their pre-approved descriptions, with the incentive that they will not, as a result, face objection for lack of clarity. As many as 30,000 such descriptions have been pre-approved in this way, with most (if not all) also having been pre-translated into the relevant official languages. Registries from a number of countries (including the UK, Germany and Sweden) are already cooperating to develop more such tools, with indications that over 100,000 terms will be included.

With the use of such pre-approved wording, the question of translating even long lists of goods/services should no longer present a logistical challenge. Translations can be built into such systems and users will be encouraged to use them since their applications (CTMs at least) will be ready for advertisement much more quickly.

Therefore, class heading specifications no longer offer a particular benefit in terms of saved translation costs.

8.3 **MARQUES** considers that the material legal uncertainty and lack of uniformity arising from OHIM's approach is not outweighed by the practical advantages it might bring for the registration procedure.

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9. Additional concern and proposal for transitional arrangements

- 9.1 If the CJEU answers the questions as we propose, this could have the effect of materially curtailing the scope of protection that many registrants currently believe they have. In particular, registrants may have deliberately chosen to register their marks using, or including, a class heading specification in the genuine belief (relying on Presidential Communication 4/03) that their registration thereby covered all goods/services in the class. This might, for example, also have been with the intention to build in an element of 'future-proofing', covering goods/services unknown at the time of filing because they had yet to be invented.
- 9.2 **MARQUES** questions whether it is fair, in the circumstances, that such protection should be removed overnight and applied retrospectively. The solution would seem to lie outside the remit of the CJEU and may again be something for the Commission.

10. Request

- 10.1 **MARQUES** seeks for the CJEU to provide clarity on the scope of protection conferred by class heading specifications. Legal certainty and clarity for the general public, in particular for an ordinary, non-professional, user should, we submit, be a major factor in the CJEU's considerations.
- 10.2 **MARQUES** also wishes to encourage national IPOs and governments, as well as the Commission and OHIM, to work together to find a solution to the possible iniquity outlined in paragraph 9.2 above. **MARQUES** would be happy to engage in any consultation process exploring the options.
- 10.3 **MARQUES** requests that you, as an Interested Party, file observations to the CJEU in support of answers to the referred questions as set out in paragraph 3.2 above, whether for the reasons set out here or otherwise.

MARQUES Amicus Curiae Committee



Guido Baumgartner, Chairman of MARQUES Council